

documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings or rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 31.10.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17958, July 5, 1973; 68 FR 51367, Aug. 26, 2003]

#### § 31.10 Decisions and notices.

(a) *Decision by a hearing examiner.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and the complainant. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon

the filing of such exceptions or of such notice of review the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. The decision of the Secretary shall be mailed promptly to the applicant or recipient and the complainant, if any. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Secretary.

(b) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a), or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Secretary shall be given in writing to the applicant or recipient and the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 31.9(a) a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless

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and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (c) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (c) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

[29 FR 16284, Dec. 4, 1964. Redesignated and amended at 38 FR 17958, July 5, 1973; 68 FR 51367, Aug. 26, 2003]

### § 31.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

[29 FR 16284, Dec. 4, 1964. Redesignated at 38 FR 17958, July 5, 1973]

### 29 CFR Subtitle A (7-1-11 Edition)

### § 31.12 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* All regulations, orders or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligations assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Orders 10925, 11114 and 11246 and regulations issued thereunder,

(2) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 23 FR 734, or

(3) Any other regulation or instruction insofar as it prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* (1) The Secretary may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 31.11), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of title VI and this part to similar programs and in similar situations.